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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jim Quallen

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29858

7590

02/13/2007

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EXAMINER

ARAQUE JR, GERARDO

ART UNIT

PAPER NUMBER

3629

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/955,490

Applicant(s)

QUALLEN ET AL.

Examiner

Gerardo Araque Jr.

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/21/2002.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Priority*

2. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

### *Claim Objections*

3. **Claim 20** is objected to because of the following informalities: In **line 2 of claim 20**, the examiner suggests to change said vendor to said notified vendor for clarification purposes. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3629

5. **Claims 1, 4 – 7, 9 – 20, 22 – 26, 30 – 41, 43 – 46, 48, and 51 – 52** are rejected under 35 U.S.C. 102(e) as being anticipated by **Blalock et al. (Pub. No. US 2001/0047284 A1)**.

6. In regards to **claims 1, 46, and 51**, **Blalock** discloses a method of standardizing price discovery and negotiation using a computer processing system comprising:

receiving at least one demand set comprising a buyer's specifications for performance elements (**Page 1 ¶ 12**);

associating with said demand set at least one vendor bid (**Page 1 ¶ 12**); and analyzing the at least one vendor bid to identify a preferred bid for each performance element (**Page 1 ¶ 13**).

7. In regards to **claims 4 and 30**, **Blalock** discloses compiling a target schedule of the preferred bid for each element, wherein vendors on the target schedule agree to become contractually bound to provide services to the buyer at the prices listed on the target schedule for a predetermined amount of time (**Page 1, 6, 17 ¶ 2, 104, 224; Page 6 Table B; Figure 6**).

8. In regards to **claim 5**, **Blalock** discloses publishing a target schedule of preferred bid for each performance element (**Page 1, 6, 17 ¶ 2, 104, 224; Page 6 Table B; Figure 6**);

compiling an individual schedule of a single vendor's bid for at least one performance element, wherein the single vendor's bid is a percentage of the preferred bid for a corresponding performance element in the target schedule (**Page 7 ¶ 158; Fig. 6**).

Art Unit: 3629

9. In regards to **claim 6**, **Blalock** discloses wherein the individual schedule can be public or private (**Page 3 ¶ 61**).

10. In regards to **claim 7**, **Blalock** discloses wherein the single vendor's bid is expressed as a percentage of the preferred bid for at least one performance element in the target schedule (**Page 1, 6, 17 ¶ 2, 104, 224; Page 6 Table B; Figure 6**).

11. In regards to **claims 9, 22 and 43**, **Blalock** discloses further comprising performing an auction (**Page 1 ¶ 7**).

12. In regards to **claims 11, 24 and 45**, **Blalock** discloses further comprising receiving new pricing data associated with at least one performance element in the individual schedule and adjusting the individual schedule for said at least one performance element (**Page 9 ¶ 137**).

13. In regards to **claim 12**, **Blalock** discloses wherein the single vendor's bid is expressed as a percentage of the preferred bid for all performance elements in the target schedule (**Page 7, 11, 12 ¶ 113, 151, 158**).

14. In regards to **claim 13**, **Blalock** discloses wherein the single vendor's bid is expressed as a dollar figure for at least one performance element (**Page 19 ¶ 246**).

15. In regards to **claim 14**, **Blalock** discloses wherein the preferred bid for different elements may come from different vendors (**Page 1 ¶ 4, 10, 12, 13**).

16. In regards to **claims 15 and 38**, **Blalock** discloses identifying differences between at least two vendor bids on an individual performance element basis (**Page 1, 3 ¶ 13, 60**).

17. In regards to **claims 16 and 39**, **Blalock** discloses identifying differences between at least two vendor bids on a total cost basis (**Page 3, 17 ¶ 60, 220**).
18. In regards to **claims 17 and 40**, **Blalock** discloses further comprising providing a database of at least one demand set template comprising all performance elements relevant to an industry (**Page 8 ¶ 116**).
19. In regards to **claims 18 and 41**, **Blalock** discloses wherein the at least one template is pre-populated with data previously supplied by the buyer (**Page 3 ¶ 59**).
20. In regards to **claim 19**, **Blalock** discloses further comprising: identifying a price for a job consisting of at least one performance element by associating said at least one performance element with a corresponding preferred bid (**Page 1 ¶ 2, 12**).
21. In regards to **claim 20**, **Blalock** discloses further comprising:
  - notifying at least one vendor that said vendor is selected to perform the job (**Page 4 ¶ 72**);
  - receiving a reviewed demand set from the vendor, wherein the demand set may contain changes to at least one performance element (**Page 9 ¶ 136**);
  - identifying a new price for the job by associating each performance element in the reviewed demand set with a corresponding performance element in the schedule (**Page 9 ¶ 136**).
22. In regards to **claim 25**, **Blalock** discloses further comprising compiling a schedule of the preferred bid for each performance element (**Page 1, 6, 17 ¶ 2, 104, 224; Page 6 Table B; Figure 6**).

Art Unit: 3629

23. In regards to **claims 26, 48, and 52**, **Blalock** discloses a method of standardizing price discovery and negotiation using a computer processing system comprising:

receiving at least one demand set comprising a buyer's specifications for performance elements (**Page 1 ¶ 12**);

associating with said demand set a first round of at least one vendor bid (**Page 1 ¶ 12**);

analyzing the first round of at least one vendor bid to identify a first preferred bid for each performance element (**Page 1 ¶ 13**);

associating with said demand set a second round of at least one vendor bid for at least one performance element, wherein said second round of at least one vendor bid is a percentage of the first preferred bid for at least one performance element (**Page 1, 6, 17 ¶ 2, 12, 104, 224; Page 6 Table B; Figure 6**);

identifying at least one second preferred bid for each performance element (**Page 1, 6 ¶ 12, 104**); and

compiling a schedule of second preferred bids for each performance element (**Page 1, 6, 17 ¶ 2, 104, 224; Page 6 Table B; Figure 6**).

24. In regards to **claim 31**, **Blalock** discloses wherein said second round of at least one vendor bid is expressed as a percentage of first preferred bid for at least one performance element from the first round (**Page 7, 11, 12 ¶ 113, 151, 158**).

Art Unit: 3629

25. In regards to **claim 32**, **Blalock** discloses wherein said second round of at least one vendor bid is expressed as a percentage of the first preferred bid for all performance elements from the first round (**Page 7, 11, 12 ¶ 113, 151, 158**).

26. In regards to **claim 33**, **Blalock** discloses wherein said second round of at least one vendor bid is expressed as a dollar figure for at least one performance element (**Page 19 ¶ 246**).

27. In regards to **claim 34**, **Blalock** discloses wherein the first preferred bid for different elements may come from different vendors (**Page 1 ¶ 4, 10, 12, 13**).

28. In regards to **claim 35**, **Blalock** discloses further comprising identifying a price for a job consisting of at least one performance element by associating said at least one performance element with a corresponding performance element in the schedule (**Page 1 ¶ 2, 12**).

29. In regards to **claim 36**, **Blalock** discloses further comprising identifying a preferred price for said job by comparing at least two vendor bids for each corresponding element in the schedule (**Page 1 ¶ 2, 12**).

30. In regards to **claim 37**, **Blalock** discloses further comprising:  
notifying at least one vendor that said vendor is selected to perform the job  
(**Page 4 ¶ 72**);

receiving a reviewed demand set from the vendor, wherein the demand set may contain changes to at least one performance element (**Page 9 ¶ 136**);



identifying a new price for the job by associating each performance element in the reviewed demand set with a corresponding performance element in the schedule (Page 9 ¶ 136).

***Claim Rejections - 35 USC § 103***

31. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

32. **Claims 2 – 3, 8, 21, 27 – 29, 42, 47, and 49 – 50** rejected under 35 U.S.C. 103(a) as being unpatentable over **Blalock (US PGPub 2001/0047284 A1)**.

33. In regards to **claims 2, 27, 28, 47, 49, and 50**, **Blalock** discloses wherein the preferred bid consists of a group of a lowest bid, an nth lowest bid, and a mean bid (Page 17 ¶ 220; Page 3 ¶ 60).

Blalock fails to disclose a mean bid.

However, it would have been obvious to one skilled in the art of providing statistical data to provide any other information to allow an individual to better understand any statistical analysis. That is to say, it is old and well known in the art to provide median number in order to better understand the spread of data. Providing a median number is only one of many tools used to better understand a set of data.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention using the teachings of Blalock to provide a median bid in order to better understand the spread of the data.

Art Unit: 3629

34. In regards to **claims 3 and 29, Blalcock** fails to disclose wherein the demand set comprises specifications selected from the group consisting of specifications for performance elements which the buyer demanded in the past, specifications for performance elements which the buyer expects to demand in the future and a combination thereof.

However, Blalock does disclose that the shippers can obtain true marketplace pricing because contracts are awarded based on bids received a few days ago instead of months ago and can conduct bids on a seasonal basis for specific requirements **(Page 4 ¶ 65 – 66)**. It would have been obvious to one skilled in the art of bidding and creating RFQ's that by analyzing seasonal trends, which would be based on past demands, to have requests put in ahead of time in order to acquire the best offer.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention in view of the teachings of Blalock that by analyzing seasonal trends to have a demand sets that would consist of demands in the past and future expectations and combination thereof in order to acquire the best offer.

35. In regards to **claims 8, 21, and 42, Blalock** fails to disclose further comprising receiving at least one spot bid.

However, one skill in the art of auctioning would have found it obvious that there are several types of auctions and would have used an appropriate auctioning technique for a given situation.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention in view of the teachings of Blalock that there are various types

Art Unit: 3629

of auctioning methods and that use of one spot bidding would have been used if the situation called for it.

36. In regards to **claims 10, 23, and 44**, **Blalock** discloses further comprising performing an auction (**Page 1 ¶ 7**).

***Conclusion***

37. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure can be found in PTO-892 Notice of References Cite.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3629

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GA  
2/5/07



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